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OFFICE OF PETITIONS

In re Application :
Kazunori Gotoh :
Application No. 10/085,643 :
Filed: February 28, 2002 :
Atty Docket No. 9281-4297 :
: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed August 19, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to three hundred eighty (380) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred eighty **(380)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 18, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. The period of adjustment of 386 days for Office delay was reduced by 530 days for applicant delay. On August 19, 2004, applicants timely¹ submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is 380 days. Applicants dispute the reduction of 530 days attributed to their delay in responding to the Notice to File Missing Parts of Application mailed April 10, 2002. Applicants state that their response was received in the Office on July 16, 2002, and thus, the delay should have led to a reduction of 6 days, not 530 days. In support thereof, applicants submit a copy of their properly itemized and date-stamped postcard.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants are correct. Their response to the Notice to File Missing Parts of Application mailed April 10, 2002, is of record

¹ PALM records indicate that the Issue Fee was received in the Office on August 20, 2004.

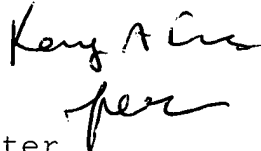
in the application with a date of receipt by the Office of July 16, 2002. Furthermore, the response included a complete reply to the Notice. Thus, the Office should not have assessed applicants a delay of 530 days. However, the response was filed outside of the three-month period under 37 CFR 1.704(b), three months and 6 days later. Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application by delaying in replying to the Notice to File Missing Parts of Application, but only by 6 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred eighty (380) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will forward the file to the Office of Patent Publication so that a patent can be issued.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Handwritten signature of Karin Ferriter in black ink.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen